

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11
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**ORDER SETTING ORAL ARGUMENT ON  
PUBLIC INTEREST**

(Issued March 8, 2002)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

The Board issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with track A (competition issues), various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations would be through participation in a multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, Wyoming Public Service Commission, and the Utah Public Service Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

On October 22, 2001, Liberty Consulting Group (Liberty) filed a report addressing issues raised by workshop participants related to the public interest of

Qwest's future entry into the in-region interLATA market.<sup>1</sup> On January 25, 2002, the Board issued a conditional statement concluding that, subject to the recommendations contained in its conditional statement, Qwest had conditionally satisfied the issues relating to public interest.

AT&T Communications of the Midwest, Inc., and AT&T Local Services on behalf of TCG Omaha (collectively, AT&T) filed comments on February 14, 2002, in response to the Board's January 25, 2002, conditional statement. In its comments, AT&T again argued that Qwest's unbundled network element (UNE) prices are so high as to present an insurmountable barrier to competition and urged the Board to reconsider this issue based on a D.C. Circuit, Court of Appeals opinion issued December 28, 2001, in *Sprint Communications Co. L. P. v. Federal Communications Comm'n*, 274 F.3d 549 (D.C. Cir. 2001) (Sprint order). The Court in the Sprint order directed the FCC to reconsider the issue of whether evidence of a price squeeze would preclude profitable competitive local exchange company (CLEC) competition.

On February 19, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion requesting the Board reconsider its January 25, 2002, determination that Qwest had conditionally met the public interest requirement. Additionally, Consumer Advocate requested that the Board schedule an oral argument on this issue to consider the effect of the Sprint order on the public interest issue.

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<sup>1</sup> This report was prepared by the "outside consultant," The Liberty Consulting Group (Liberty), which was retained to assist the state commissions collectively by making recommendations for resolution of impasse issues.

Qwest responded to the comments of AT&T and Consumer Advocate's motion on February 28, 2002. In its response, Qwest notes that the D.C. court remanded so that the FCC could either "pursue [AT&T's] price squeeze claim or at the very least explain why the public interest does not require it to do so."<sup>2</sup> Qwest urged the Board to dismiss the request for oral argument and the reconsideration requested by AT&T, arguing that the Sprint order was not applicable in this situation because the evidence was evaluated and rejected on the merits of the evidence presented.

AT&T filed further comments and an offer of supplemental authority regarding the public interest issue on March 5, 2002. Qwest may file any response to these further comments by no later than March 12, 2002.

The Board agrees with Consumer Advocate that this issue is of great importance to the public and will schedule an oral argument on March 14, 2002. The Board will allow those arguing that Qwest has failed to meet the public interest requirement of § 271 a total of 25 minutes to make that argument. Qwest will be given 25 minutes to make its argument that the Board's January 25, 2002, conditional determination is still appropriate under the Sprint order. Rebuttal to Qwest's argument will be limited to ten minutes.

**IT IS THEREFORE ORDERED:**

1. Any responses to the March 5, 2002, offer of supplemental authority filed by AT&T shall be filed on or before March 12, 2002.
2. An oral argument for the purpose of hearing argument on the public interest considerations relating to § 271 compliance will commence at 2 p.m. on

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<sup>2</sup> Id. at 554.

March 14, 2002, in the Board's hearing room at 350 East Maple Street, Des Moines, Iowa. Parties shall appear at the oral argument one-half hour prior to the time of oral argument. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

3. Those interested participants wishing to participate with arguments similar to those of AT&T and Consumer Advocate should make contact with the attorneys for AT&T and Consumer Advocate so that the combined initial argument of those participants is not more than 25 minutes. The combined rebuttal of these participants is limited to ten minutes.

4. Qwest will be permitted 25 minutes to respond to the initial arguments.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8<sup>th</sup> day of March, 2002.